

PUBLIC HEARING

AUGUST 3, 2011

A public hearing of the Council of the County of Kaua'i was called to order by Nadine K. Nakamura, Chair, Planning Committee, on Wednesday, August 3, 2011, at 1:39 p.m. at the Council Chambers, 3371-A Wilcox Road, Līhu'e, Kaua'i, and the presence of the following was noted:

Honorable Dickie Chang
Honorable KipuKai Kuali'i
Honorable Nadine K. Nakamura
Honorable Mel Rapozo
Honorable Joann A. Yukimura
Honorable Jay Furfaro, Council Chair

Excused: Honorable Tim Bynum

The Clerk read the notice of the public hearing on the following:

BILL NO. 2410 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8 OF THE KAUAI COUNTY CODE, 1987, AS AMENDED, RELATING TO THE PERMITTING PROCESS FOR TRANSIENT ACCOMMODATION UNITS,

which was passed on first reading and ordered to print by the Council of the County of Kaua'i on July 6, 2011, and published in The Garden Island newspaper on July 19, 2011.

The following communications were received for the record:

1. Elli Ward, dated August 3/2011
2. David Dinner, (undated)
3. Marj Dente, dated August 3, 2011
4. Glenn Mickens, dated July 30, 2011
5. Tom H. Shigemoto, Vice President, Kukui'ula Development Company (Hawaii), LLC and A&B Properties, Inc.
6. Ken Taylor email, dated July 30, 2011
7. Kevin Fantz email, dated July 25, 2011
8. Walter S. Lewis, dated July 28, 2011
9. Robert and Lila Dolan email, dated July 30, 2011
10. David Z. Arakawa, Executive Director, Land Use Research Foundation of Hawai'i, dated August 3, 2011
11. Randall Francisco, Kaua'i Chamber of Commerce, dated August 2, 2011
12. Rich Hoepfner, dated August 3, 2011
13. Carl Imperato presentation, dated August 3, 2011

The hearing proceeded as follows:

DAVID ARAKAWA: Good afternoon again, Madame Chair and members of the Kaua'i County Council. My name is Dave Arakawa and I'm here on behalf of the land use research foundation. You have our written testimony so I'm just going to highlight a couple of things. We strongly support the portions of Bill 2410 which address the vested rights and equitable estoppel issues relating to resort projects which currently exist and/or are under construction where substantial sums have been expended in reliance on or pursuant to the conditions of government approvals, including project visitor destination areas of VDA ordinances and project zoning ordinances.

We also have some comments and proposed revisions that we put in our testimony. I wanted to just highlight a couple of things. First is that as provided in the planning report prepared by the planning department on a prior bill, but on the charter amendment, the TAU growth cap in the chapter amendment section 3.19 is inconsistent with the Kaua'i general plan. There are a number of inconsistencies. It does not concur with the general plan stated policy for visitor unit and resort growth, and it will in fact effectuate a growth rate that is loosely based on projections and studies that are not meant to function as compulsory targets. The general plan did not recommend limiting development within the VDA to a prescribed growth rate, and the figure used, the growth cap rate of 1.5% is based on findings of a visitor unit demand study conducted 10 years...it was a ten-year-old study, so there are issues with respect to the charter amendment itself.

Last two points. We support this bill because the exemptions are based on fairness, equity, and legal principles, and we go through that in our testimony. Lastly, the issue is going to come up what to do with exempt projects and what to do with projects that are outside or don't fall under this charter amendment. And we believe that if a project is exempt, that it should be exempt. It shouldn't have to stand in line with everybody else and wait for a permit. Also, if the project is judged to be non-applicable, like this law or the charter amendment does not apply to it, again, they shouldn't have to stand in line for an approval. That is it. Thank you very much. We appreciate the opportunity to testify before you. Thank you.

Ms. Nakamura: Thank you Mr. Arakawa. Councilmember Yukimura, you have a question for Mr. Arakawa?

Ms. Yukimura: Yes. Hi. Thank you for your testimony. In regards to your paragraph in the middle of your second page about the growth rate cap of 1.5% being based on a 1998 visitor demand study. You know, the plan was I think adopted in 2000.

Mr. Arakawa: I beg your pardon?

Ms. Yukimura: The general plan. So that 1998 was really not that far from the decision points on the general plan. So I'm not quite understanding why you think it's too late or that it was too old.

Mr. Arakawa: Okay. This is from the planning department's study and there are a couple of things. One, the first thing is using 1.5 in and of

itself, the planning department said the general plan did not recommend limiting development within the VDA to a prescribed number. So that 1.5, that paragraph right before, so there is a question about the 1.5 to begin with. With respect to the 1998 study, yes, the study was done in 1998. Yes, two years later, the general plan was adopted. But this ordinance... Excuse me, this charter amendment was passed at the election in 2008. So that made the study ten years old already. So at the time that the voters voted on the charter amendment, that information was already ten years old. And the planning department talks about the problems with having a 10-year-old report and relying on that and pulling a number out of it, when a number out of it, and making that number a prescribed growth rate. All of these are direct quotes from the planning department. It struck me as relevant for your folks' consideration and in considering the projects that should be...I don't want to say "grandfathered in," but the exempt projects. We're talking really about fairness. These long time...some of them are long time Kaua'i companies that have put in roads, sewers, you know, water improvements, and in reliance on their permits or their approvals. So we thought that the bill as drafted was rather fair.

Ms. Nakamura: Any further questions?

Ms. Yukimura: Yes. So I understand the point about the amount of investment and money put upfront. My question was just in terms of the right of a community to not just follow demand, but also to follow what is desirable from a community standpoint. I mean, the general plan may have been more an expression of what a community wants, rather than what can be projected or demanded.

Mr. Arakawa: Correct. And I think that is a very valid point and I think that is something that you all are...you're elected to do. I was a corporation counsel in Honolulu when the city council did the sandy beach case, and that was after a referendum. Over 100,000 people said downzone Sandy Beach, and that's what they did. We got sued. The court came back and said you violated the vested rights of these... In that case, the owners only spent \$200,000 in soft cost, just engineering, architecture...they didn't even dig in the ground. So that was a situation where the council thought it was following the will of the people, but they didn't look at the legal issues on vested rights and estoppel.

Ms. Nakamura: Thank you. Any further questions? Okay, thank Mr. Arakawa.

CARL IMPARATO: Aloha Councilmembers. My name is Carl Imparato. I'm speaking on behalf of the coalition for responsible government. You have our written comments. I just want to briefly highlight some things here. First of all, there is some background about the Kaua'i general plan, and I put that in there so you'd see that the general plan, its scenarios look towards 2,060 to 3,510 additional transient accommodation units over 20 years. When you use a 75 percent occupancy rate, which the coalition did, the number comes out to 2,666 units, so it's within the range of the general plan there. And of course the planning commission approved more than three to five times the growth rate that was contemplated in the general plan scenarios.

The charter amendment gives the council the ability to delegate permit approval to the planning commission upon enactment of an ordinance that limits the rate of increase of transient accommodation units to 1.5% per year on a multi-year average basis. And there is no exception allowed from that limit for projects that have been approved but not yet built. So proper handling of this backlog of some 3800 plus transient accommodation units that have been approved already is critical to coming up with a legal approach to implement Bill 2410.

If you go to page 5 of the document that we sent, you can see that it includes a growth rate curve, 1.5% growth rate curve, and that 3847 existing resort project units would take you to the year 2031 on that growth rate curve if you approve nothing else. So how we handle these existing resort projects is a critical issue. Vested rights of developers must be respected, and we believe there is flexibility in the charter language to allow that happen. Now the first thing is we have to determine who are legitimate existing resort projects—the ones that deserve special treatment, vested rights, and all of that. So that is a critical matter is determining what the right number of projects are that have vested rights, because it can range from 4,000 to 6,000 or more units. We believe as the problems with the bill (First of all, I'm on page 5 of our notes.) that the exemption for existing resort projects is too broad. That includes not only those live projects that have come before the planning commission in the last ten years, but it could go back to projects that don't even exist where there is just land with that zoning. If we're too broad on what are existing resort projects, compliance with the charter amendment could be pushed off to 30 years. So our first concern is that we need to look carefully at the language that exempts existing resort projects and also that exempts tentatively approved subdivisions and multi-lot subdivisions.

Next problem is that under Bill 2410, the amount of future growth would be based on the actual number of transient accommodation units, rather than the allowed number of transient accommodation units. So what that ironically means is that the further out of compliance the county gets in terms of if it's way above that curve, then they get to approve even more units.

Ms. Nakamura:
three minutes, Carl.

So your first three minutes. You have another

Mr. Imparato: Thank you. So the issue of the baseline for growth is an important one that needs to be (inaudible) remedied. Second issue is that this backlog of units that needs to be paid off, we believe that the Bill, by just saying that we're going to only use 20 percent of the future growth allocations to pay off this backlog of existing resort projects, that's far too small and that would result in paying off only a quarter of the backlog in 25 years. So I think more thought has to be different to that. The other major problem that I want to bring up is that after five years, the way we read the bill's language, if a big bubble of projects come through, these existing ones, these 3800, if 3,000 of those units even got built in the next five years, just as an example, then what would happen is, the way the bill's language handles things, it says we're going to pay off a little bit of that backlog, but only look at that for five years, and then afterwards we're going to forget about that backlog. Now I understand in talking with staff that that is not the intent of the bill. Maybe I'm reading it wrong; maybe the language is wrong, but it's still

something that we need to really look at closely. I'd like to basically finish by saying that when we put all these pieces together (if you go to page 12 of the testimony), you see that it compares the 1.5% annual growth requirement curve to what would be allowed under the 2410 methodology, which is in effect a 2.3% annual growth rate for this particular scenario. It really depends on the scenario.

So what we'd like to say is that we look forward to working with the council and the rest of the county on trying to find out what can be done to deal with the issues that we discussed. We think we're not that far apart. We think it's more of a wording issue, and we hope it's something like that, because I think we are close to coming up with a solution that will both respect the rights of existing resort projects and what respect what the bill...what the charter amendment requires. We offer this testimony in that hope and the (inaudible). I guess the dictum is do it right or don't do it at all. Thank you.

Ms. Nakamura: Thank you, Carl. Councilwoman Yukimura, you have a few questions?

Ms. Yukimura: Yes, please. In your conclusion, the fourth conclusion that the proposed alternative method addresses the rights of vested existing resort projects, provided that vesting is not too loosely defined. I don't know what you mean by the next line, which says, imposes no new burdens on projects that already have permits. What imposes new burdens?

Mr. Imparato: Okay. I didn't speak to it today for the lack of time, but we did propose an alternative method that we believe works, and we believe that that alternative method that we have proposed in the written testimony is a method that imposes no burdens on the projects that have their permits. In other words, the 3847 units that presumably already have their permits, I think that was the number, under our proposed approach, those projects would be allowed to be built; they would not have to get in line for TAU certificates under this one proposed approach (I'm sure there's some other proposed approaches). And so there would be no burdens on those types of projects. That is what I meant.

Ms. Yukimura: So do you have a legal opinion or paper that defines what you believe "vesting" is?

Mr. Imparato: I know that vesting law is constantly changing and all. We believe that projects... I guess we don't have a legal paper on that right now. It's work that we will commission if necessary, but we believe that the way the bill is drafted right now, because it also includes language that in essence is a safety valve. There's safety valve language in the bill that says that after the TAU certificates are completely allocated, if a party wants to still propose a project, that that party can then come to the county council for approval, or for consideration for approval, that that safety valve really covers even a broadly construed definition of "vesting," because no party would have his rights harmed by this bill. No party would, as a result of this bill, find out that they could not build. What they would find out is that there no more permits, the TAU certificates, at the commission, that they come to the council for due consideration as to consistency with the general plan. And so the approach that is in the bill, if it's appropriately implemented, does

not harm even vested...any project that I believe could conceivably argue that it has vested rights. I didn't speak to that provision in the bill. I assumed that... I can find it.

Ms. Yukimura: Well I think the county is obligated to exempt those properties where the right to TAUs has vested. Right? If we're to follow the law. But the question is what are those? Whether it's vested or detrimental reliance, or whatever the issue is, where legally the county cannot take away that right. And I agree with you that we wouldn't want to permit any more than have actually are immune. But I'm trying to understand where we would draw that line.

Mr. Imparato: Well, my understanding of vesting rights is that rights are vested when a party has received the final discretionary permits in the process and has spent substantial sums. So those are the two broad criteria. So when we look at the projects that have made it through the planning commission in the last eight years, most of those projects have received their final discretionary permits; whether they have spent substantial sums or not is something that they need to make a showing of under this bill. The concern that we have is that parties that do not have their final discretionary permits, parties that just have zoning, but no project, that those projects not be considered vested. We don't believe that they do get vested rights. Having made that broad statement, I know that the law of vesting and zoning estoppel is much more detailed than that, and that is why I can't go into much more detail.

Ms. Yukimura: Alright, thank you.

Ms. Nakamura: Mr. Imparato, can you explain your proposal to address the concerns you have raised?

Mr. Imparato: We think that there is a simple way to really resolve the problems that we raised about how the growth rates are calculated and that is basically to say... Conceptually, you draw a curve of what one and a half percent growth is, pretty straight forward, it's just a formula, it's a compounding growth formula, and let's say it's the year 2012, it's time to determine how many permits, how many TAU certificates we are going to give out in the next five years. So you go to that curve and you say, well in the year 2017, what is the total number of transient accommodation units that are allowed in the county under the bill? It's such and such. There's just two numbers you need to subtract from that. You say, well what do we have in inventory today, subtract that. And what have we had that we made commitments for that isn't built yet, projects that have TAU certificates but haven't entered the inventory, projects that the council may have approved but not yet entered the inventory. So you are basically saying here is what is allowed, subtract what there is, subtract what's in the process, and the remainder is the headroom that can basically be given out by the planning commission. We believe that's a simple way to interpret the bill...I mean the charter amendment, and it leads to compliance with the 1.5% growth rate over an extended period of time. And I think one of the last slides in the package shows how that would happen over 20 or 25 years. I would want to say one more thing. That is just one proposed solution. There are probably many proposed solutions, and we're not trying to say that it's got to be done one way; we're just trying to point out there are problems...there may

be problems which may not be insurmountable, they may just be not reading the language in the same way, but here's a way to solve it.

Ms. Nakamura: Thank you. Are there any further questions?
Councilmember Yukimura?

Ms. Yukimura: You said 2012... Okay wait. How many permits to issue, you determine that by minusing the existing, and then what was the second group that you would suggest have to be minused?

Mr. Imparato: The ones that don't exist yet, but have the right to build. So in other words, you have parties that have projects under construction. You have parties that received their certificates but haven't begun construction. You have parties that "are exempted as existing resort projects." And that will have been determined, because to qualify for an existing resort project exemption, you have to do that within a year of the bill's passage. So you have all of these pre-existing commitments, things that are in the mill that haven't shown up in the inventory yet, and those need to be assumed to be in the inventory before you know how much headroom you have left to approve for the future. Hopefully that graphic on page 14 kind of elaborates on that.

Ms. Yukimura: Thank you.

Ms. Nakamura: Any further questions? Thank you Mr. Imparato.

Mr. Imparato: Thank you for your time.

Ms. Nakamura: I believe the next speaker is Chris Moore?
(comment from gallery: I won't be testifying today.) Alright, then we'll good on to Glenn Mickens.

GLENN MICKENS: Thank you Nadine. For the record Glenn Mickens. You have a copy of my testimony; let me read it for the viewing public, please. I have been given a copy of the testimony That Walter Lewis emailed to your committee, which I believe all of you have, for this hearing and I approve and support the comments and suggestions he made. Walter's conclusion that the bill in its present form violates the terms of the charter amendment should be clear to all. The accomplishment of the return of authority to process transient accommodation approvals to the planning commission as provided in the charter amendment would be simple, except for the complications arising from the actions by the planning commission in conferring preliminary approvals for projects of owners who contemplated building transient accommodations. Disregarding the restraints of the general plan, the commission bestowed its blessings at a rate vastly greater than the guidelines of the plan. In all, it seems that there may be as many as 4,000 accommodation units involved. The owners of these properties are not culpable. They did not nothing wrong, but their position is tainted by the excesses of the planning commission. Walter's suggestion for dealing with this difficult situation merits close consideration. As Carl just pointed out, he presented some very good suggestions, I think Walter presents some too. Walter's solution is reasonable and fair. First, have a registration of such owners and find out how many units are

involved. Then give the qualifying owners a priority over others to build after meeting usual requirements. To allow the planning commission to give order to the priority, require the owners to commit when the units in the project are to be built. This will allow owners who want to proceed earlier to go ahead of owners who want deferral of their time to build. It should be possible to process all such owners within a reasonable time. Finally, if any owner would be aggrieved by a decision of the planning commission, give such owner or owners the right to appeal to the council to adjudicate the position. This arrangement solves a difficult problem and allows both the purposes of the charter amendment to be carried out and gives any owner who believes his legal rights have not been honored a fair audience. So I just believe that this solution, I think it, you know...there's probably others in the audience that want to add solutions. I think this is one I think would work.

Ms. Nakamura: Thank you, Mr. Mickens.

Mr. Mickens: Thank you.

Ms. Nakamura: Any questions for Mr. Mickens? Thank you.
Next speaker.

RICH HOEPPNER: Hello, my name is Rich Hoepfner. Charter amendment 3.19 of 2008 is very clear in its purpose, and the citizens of this county passed by a nearly 2 to 1 margin. That is now part of the law of this county. This is the county charter. It is the law of our county, and you the council were sworn to uphold that and other state and federal laws. If each of you as an individual votes in favor of passing this ordinance 2410, you will be violating your oath of office because this ordinance allows for the approval of a number of permits that is in direct violation of charter amendment 3.19 and the general plan now in effect. If there are members of the community who are not happy with the number of transient accommodation units that the charter amendment allows, then let them get in line and get their approval certificate in chronological order. This ordinance has legalese language and exemptions that do not comply with charter amendment 3.19. Read section c of that document, which clearly states what your responsibility is. Number one, to pass an ordinance that delegates issuance of permits to the planning commission, and to pass an ordinance limiting the number of transient accommodation units to comply with charter amendment 3.19 and the general plan. It is then the responsibility of the mayor and his appointees to follow that compliance or be replaced. Since council has no disciplinary functions over mayoral appointees, ordinance 2410 clearly goes far beyond what 3.19 requires and gives those appointees far too many opportunities to not comply. Historically, even ethics violations result in only reappointment to another government post. Passage of this ordinance will create distrust of the council members who vote for it, just as state and federal actions have created distrust and lack of confidence in members of those institutions. Ladies and gentlemen, follow the law of our county, protect your integrity, and vote no on this ordinance.

Ms. Nakamura: Thank you for your testimony. Are there any questions?

Ms. Yukimura: Yes, I have a question. Hi, Rich. Do you think that the council can pass a law that takes away a property right that has already been vested or has been made permanent by zoning estoppel?

Mr. Hoeppepner: Carl has a plan for that and that is not your responsibility. You have professional people in the planning department that get like \$100,000 a year to do their job. Let them do their job, but hold them responsible for doing it properly in compliance with our county charter?

Ms. Yukimura: Wait, I don't think you understood my question, because whether it's a planning official or a council member, do you think it's possible to take away a right that has already been vested or given? Let me put it another way. Is it possible that the charter amendment that was passed was too late? That is that the rights given out had already been granted? Because no charter amendment or law could take that away. It's hard to determine what has been given and what hasn't.

Mr. Hoeppepner: I think Carl answered that. There are other ways to do this, but 24 10 is not the way to do it.

Ms. Yukimura: Well, do you think that that's... I didn't hear Carl say that there was a way to take away rights that had already been vested.

Mr. Hoeppepner: No, he said there was a way to include those backlogs with the 1.5% over the next five years.

Ms. Yukimura: So what I hear him saying is that you can...and it may be the gift of this charter amendment, that you can chronologically determine the sequence in which units that have been given vested rights can be developed?

Mr. Hoeppepner: Yes.

Ms. Yukimura: But you can't take them away?

Mr. Hoeppepner: The people of the county spoke when they passed 3.19.

Ms. Yukimura: Yeah, but even the people of the county can't take away rights that have already been established.

Mr. Hoeppepner: And what I am saying is that Carl's plan allows for that...

Ms. Yukimura: I think I understand what...

Ms. Nakamura: Do you have any other further questions?

Ms. Yukimura: No. I understand what your position is. Thank you very much.

Ms. Nakamura:
speaker.

Any other questions? Thank you very much. Next

DAVID DINNER: Good afternoon, I'm David Dinner, as you might have guessed. I will read a short testimony. Thanks to the members of the council for the exhaustive work that this bill takes to understand and to work out in a legal and fair way. We all recognize that there are complex issues wrapped into the fabric of the bill and that the actions of the council in drafting it will have far reaching consequences into the future and the future of life on Kaua'i. One of the things about this economic era, it's a downturn obviously, is that we can look back on the past and see that we as a community have become far too fat to function. We have made a lot of maybe short-term changes in our community, and they haven't really allowed for the future growth. So we need to do something that is going to adjust for that. Obviously, that is what is in front of us today. We fed the engine of growth and we're choking on the result. We can easily link our worsening automobile traffic, budget shortfalls, energy issues and job shortages to our unwillingness to moderate our actions, and if we continue on the same course, we can be assured of even more of the same. During these hearings you have been reminded repeatedly that the citizens of Kaua'i spoke loudly and clearly in 2008 when over 60% of the voters supported the charter amendment to limit the growth of transient accommodations to the strict limits set forth in the Kaua'i general plan. I urge you to take that vote into your hearts as the voice of the people. I know that is what we're talking about and I know you want to do that. So I do want to recommend what Carl is saying to give him very careful consideration, because I think the solutions that he has come up are workable. No, I don't think you can take rights away from people, but I think we can do this in such a way that those people who really don't have rights aren't going to get them. I think that is what we need to look at. We need to honor those permit agreements we made in the past. We also have to protect ourselves from allowing out of control growth to continue into the future. We must arrive at a fair and equitable solution to the construction of transient accommodation units. But most important we must be sensitive to the overwhelming voice of the people. The people of Kaua'i have invested their time and effort to create the charter amendment, and we have a history of standing resolutely for what we believe as a community. Please understand that the citizens of Kaua'i are united in their intent to be heard and have their charter amendment vote respected. We will do whatever is necessary to achieve that aim. Thank you so much. I appreciate it.

Ms. Nakamura: Thank you Mr. Dinner: Any questions?

Ms. Yukimura: May we have a copy of your testimony?

Mr. Dinner: Yes, I'm sorry, I forgot to hand it in.

Ms. Nakamura: Any further questions? Thank you. Next speaker, please.

MARJ DENTE: Good afternoon. My name is Marj Dente and I live in the Waipouli ahupua'a. I support the intent of this ordinance 2410 to respectfully control growth here on Kaua'i, and thank you for this opportunity to

testify. I had some concerns other than the testimony already given. There does not seem to be any definition of "resort project" in this ordinance. If there is, I can't find it anywhere, so I do not personally know what that means. And I assume this ordinance does not include transient vacation rentals in ag zones, as page 6,c1 identifies only visitor destination areas. But if I'm wrong on that, then somebody needs to correct this ordinance, because if this includes TVRs in ag zone, then I am taking away my commendation of this ordinance, because it should not include TVRs in ag zone. As I understand it, this ordinance only applies to what you call VDAs, visitor destination areas. In my opinion, 60 days is not sufficient time to process any kind of application, unless there is a sufficient increase in planning commission staff and sufficient money in the future budgets of this county to cover this necessary expense. I have had too many situations where applications have happened. They have given approval, because of default, because the planning commission and other agencies within the county government are hopelessly understaffed. This is not your problem, but it is a problem for future applications. They cannot be given because of default of the 60-daytime period, in my opinion. I request that the process that the planning commission uses to approve applications should improve proper notification to neighboring property owners within 150 feet of the applicant's property corners. And for some reason, I can't make any sense out of page 7g, there must be a letter or a word or a number omitted, or if there is some... There's a grammar point that I think needs to be reviewed. I'm sorry, I can't make any sense out of it, but maybe I'm not reading it correctly, and that is all I have to offer at this time.

Ms. Nakamura: Can you repeat the page number?

Ms. Dente: Yes, it's page 7g.

Ms. Nakamura: Thank you, Mrs. Dente. Any questions?

Ms. Yukimura: Do we have a copy of your testimony?

Ms. Dente: It's just in long hand. I would be happy to send it to you on email later?

Council Chair Furfaro: If you would like to do that?

Ms. Nakamura: Or we can make a copy of what you have.

Council Chair Furfaro: We can make a copy now.

Ms. Nakamura: That would be fine.

Ms. Dente: I will sign it and date it. Thank you. And I suggest that you put some padding on this chair, it's really noisy.

Ms. Nakamura: Thank you very much. That is a good suggestion. And our final speaker?

KEN TAYLOR: Chair, members of the board, my name is Ken Taylor. First of all, Ellie Ward was here earlier and had to leave, but turned in a little note. She has off-island guests here on the island working on economic development.

Council Chair Furfaro: We have a copy, Ken.

Mr. Taylor: Fine. Thank you for this opportunity and I would just like to say that some of the previous speakers, David, Carl, Richard, Glenn, Walter's written comments, I have read Ellie's, and Marj testimonies, I certainly agree with. I think it's a real shame that this ordinance does not follow the charter amendment as it was approved by a 2:1 vote by the people. I don't think by lining people up and allowing them to fall in place under the 1.5% that's spelled out in the charter amendment is denying them anything. We know today that the economy is down. The number of tourists coming to the island is down. I don't believe that there is any real need to build additional units at this point in time. And so this is a perfect time to spread out what's in the pipeline and address the charter amendment as voted on by a 2:1 margin of community members. I find it really disappointing that you folks would bring this even to the floor under the circumstances without addressing completely the charter amendment 3.19 and 3.19c. It not only talks about what you have put forth here in section 1, the purpose, but it also talks about the 1.5%. I find it real disingenuous on your part that you would take part of the charter review...or the charter 3.19c, put that in your document, but not put the latter part of that same 3.19c in this product. So I think you need to vote no on this process, and go back and rewrite it, so it conforms completely to the charter amendment. As it's been said earlier today, you have sworn to uphold the charter, it's time to step up and do your job. Thank you.

Ms. Nakamura: Any questions for Mr. Taylor? If not, would anyone else like to testify who hasn't registered?

Council Chair Furfaro: If there is anyone in the audience that plans to testify, please up and register. If you have not... Thank you.

TOM SHIGEMOTO: Sorry I didn't register earlier, because I wasn't planning to speak. But after hearing some of the testimony, I felt compelled to say something. For the record, Tom Shigemoto. I'm employed by A&B Properties. I testified when this bill was first referred over to the planning commission, and I may not be the right person to put things in perspective, but I testified to the fact that this ordinance or the bill that had been drafted at the time, complied with the language of the charter amendment. We're not here to debate whether the charter amendment is good or bad. It's passed. We all concur that it's passed, and we have to do the best we can to strike or come up with an ordinance that makes the whole process work. I think the county attorney's office, your county attorney, has done a really, really good job in trying to protect the county from lawsuits in the event that somebody feels that their rights were violated. And vested rights, definitely is something that needs to be protected, and obviously, where I come from, for the company I work, for the project that I represent, I think we fall into that particular category. I believe some of the other projects as well. But the point is this ordinance was drafted in consideration of everything that the county needs to be

mindful of. And I testified at the planning commission that we are here to ask for a reasonable and fair decision on this particular bill, and let's move forward. Now I have heard some testimony saying that we should kill it. You kill it, then what happens? The 1.5% growth rate is no longer applicable. The county council has the authority to go back to what the general plan growth rate calls for, which is a bit...I think it's something like 2.2%. So if that goes out the window, now what happens? Applicants or applications will have to be made to the county council. And is the county council willing to and able to handle all of these, or do you want to be a pseudo planning commission? I don't know, maybe you do, fine. If you do, then kill it, but if not, then adopt something that is reasonable for everybody concerned. Thank you.

Ms. Nakamura: Thank you, Mr. Shigemoto. Any questions for Tom?

Mr. Shigemoto; Thank you.

Ms. Nakamura: Would anyone else like to testify? So then we will close this public hearing, and we will be deliberating this bill in the planning committee meeting beginning next week Wednesday at 9 o'clock. So thank you all for coming and expressing your opinions today. Thank you.

There being no further testimony on this matter, the public hearing adjourned at 2:28 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter A. Nakamura', written over a horizontal line.

PETER A. NAKAMURA
County Clerk

/ao

